

## **Thomas, Miller, Green & Associates, LLC**

P.O. Box 1094 Washington DC 20013. Phone (202) 321-0592. Fax (202) 546-0978

---

### **Responses to Request for Comments on the New Market Tax Credit**

1. IRC §45(D)(f)(2) requires that in making the allocations of NMTCs, priority be given to:  
(a) any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities or (b) any applicant which intends to satisfy the Substantially All Test by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the CDE hold a majority equity interest.

- (a) How should the fund implement this policy? For instance, should the Fund incorporate preference points into the scoring? Should the Fund make awards to organizations that are deemed competitive and meet one or both of these criteria before providing an allocation to any other applicant?

In evaluating qualified applications for NMTCs, the Fund should utilize a weighted scoring system that gives priority to those applications that show the greatest evidence of achieving the legislative intent of the statute. Specifically, a weighted system will put every application on an even par, not eliminate any one application from contention for any one criteria, and result in a non-subjective process that will generate outcomes that result a greater number of applications receiving an allocation of NMTCs that have the desired characteristics. This weighted selection system will result in more applications that have either a record of provision of capital to disadvantage businesses or intentions of providing capital to unrelated businesses. As a result, all applications can be judged evenly.

- (b) What specific factors should the Fund consider when evaluating whether an applicant meets the requirements for priority treatment?

The greatest weight under a weighted selection system should be given to applications that demonstrate the greatest ability to successfully provide capital and technical assistance to disadvantage businesses and communities. While priority (i.e., weights) should be given to those applicants that have demonstrated this in the past, it is the future ability that is paramount. The best way to achieve the successful provision of capital and technical assistance to disadvantage businesses and communities is to select those applicant that demonstrate in their application that their investment strategy and Comprehensive Five Year Plan was

development pursuant to a holistic revitalization approach. The following should be evidenced in order to demonstrate a holistic revitalization approach:

- The solicitation of input from the applicant's targeted community. For example, input may be solicited from: other community CDC's (community development corporations) including other CDFIs and SSBICs, members of the faith based community, and community agencies tasked to promote economic development for their input when developing the Comprehensive Five Year Plan.
- The target investment area includes an Empowerment Zone, Enterprise Community or Renewal Community Designation.

The input from the community will provide the applicant with the most integrated Comprehensive Plan and investment strategy, and as such will help to ensure that all segments of the business community receive access to capital and (just as important) the technical assistance to utilize that capital. Target investment areas that include EZ, EC or RCD will provide the investors and the businesses with reductions or eliminations of capital gains taxes. Thus CDEs that target EZs, ECs and RCDs will provide their investors with "backend" incentives to invest capital in businesses operating in low-income communities via the CDE, making investments in the CDEs more likely, and as a result, making the success of the NMTC program for that applicant more likely. In addition, the EZs, ECs and RCDs will also be able to provide additional technical assistance to businesses to complement the technical assistance provided by the CDEs.

- (c) Should more weight be given to one priority category over the other and should an applicant be allowed to receive preference points under both priority categories?

Under our proposed weighted selection system, each desired criteria should be given a weight, and applications that exhibit those desired criteria should be granted the entire weighted score amount. This way, applications that demonstrate the most desired criteria will be selected first and more often. As to which weights to give to which criteria, we believe that the successful implementation of the legislative intent of the NMTC program should be given the greatest weight. This will mean granting the greatest weight to applications that demonstrate that they have developed their investment strategy and Comprehensive Five Year plan with the assistance of the community and have targeted EZ, EC and RCD as part of their targeted communities.

2. Should there be limits as to the amount of a NMTC allocation that may be awarded to an applicant in a calendar year?

No. The limit on the amount of a NMTC allocation should be informed by the amount of deal flow (i.e., businesses requiring capital) that the CDE states that it can service in a

calendar year or pursuant to their Five Year Plan as informed by their holistic assessment developed with input from the community. For example, if the CDE states that it can realistically deploy \$100 million dollars in a year, then based upon availability, it should be awarded \$100 million dollars in NMTCs. If the CDE states that it can realistically deploy \$200 million dollars over a five year span pursuant to its Comprehensive Five Year Plan, then, based upon availability, it should be granted \$200 million in NMTCs. However, CDEs should not be granted any more NMTC in any subsequent years until it is able to demonstrate that it has deployed substantially all of its funds. This methodology will reward those CDEs that carefully construct a community informed Comprehensive Five Year Plan.

3. During the evaluation process of NMTC applications, the Fund will request that applicants provide information on their track records for providing capital or technical assistance to Low-Income Communities and disadvantaged businesses and the effect that such investment/technical assistance has had on such Low-Income Communities or businesses. Applicants may also be required to describe the social underwriting criteria that they will use when deciding which companies to invest in. If an applicant receives NMTC allocations, it will be required to report to the Fund on the ways in which the Qualified Equity Investments are used to benefit Low-Income Communities.

- (a) What indicators should the Fund assess when evaluating the community development impact of an applicant's prior activities or the social underwriting criteria of its loan policies?

The indicators used for evaluating the community development impact of an applicant's prior activities should include:

- Increase in jobs in the targeted investment area;
- Increase in businesses in the targeted investment area;
- Increase in tax base in the targeted investment area; and
- Increase in capital invested in businesses operating in the targeted investment area.

The indicators used for evaluating the social underwriting criteria of the loan policies should include:

- Whether any non-credit or fiscal criteria is included in the social underwriting criteria (e.g., resident of a low-income community, member of a socially disadvantage classification);
- Whether any loans have been made pursuant to the social underwriting criteria; and
- Whether technical assistance is provided to applicants to raise their credit score, where those applicants are then awarded loans.

- (b) On what basis should the Fund judge how "successfully" capital or technical assistance has been provided?

See answer 3(a).

- (c) What information should the Fund request from allocation recipients as indicators for evaluating the effectiveness of the NMTC Program (e.g., number of jobs created or retained, increases in revenues of businesses receiving Qualified Low-Income Community Investments, rates of return to investors from Qualified Equity Investments, or number of clients served at facilities that are developed)?

See answer to 3(a).

#### Other comments

Section 45D (d)(1)(C) provides that the term “qualified low-income community investment” includes financial counseling and other services to businesses located in, and residents of, low-income communities. What types of services should constitute “financial counseling and other services” for these purposes?

“Financial counseling to businesses located in low-income communities will of course include the technical assistance required for businesses to take full advantage of the capital that will be provided. What is included in the definition of other services to the residents of low-income communities should also serve to achieve the legislative intent of the NMTC program – holistic economic development. To that end, we believe that other services to residents of low-income communities should include the provision of mortgages to the residents of the low-income communities pursuant to the limited Risk Sharing Demonstration Program of the same Community Renewal Tax Relief Act of 2000 (Act). It is true that the provision of mortgages, if left unchecked, could exhaust considerable amounts of investment capital, however, Section 143 of the Act, the Risk Sharing Demonstration program, is a limited program that was enacted as an integral part of the holistic economic revitalization efforts sought to be achieved by the Act. The Risk Sharing Demonstration program is limited to:

- 1 million mortgages over a five year period;
- Insured CDFIs that have entered into risk-sharing contracts with the FHA pursuant to the Act;
- A 5-year period beginning on December 21, 2000; and
- One- to four-family dwellings.

Permitting CDEs to provide mortgages pursuant to the Risk-Sharing Demonstration program will enable the CDEs to have a greater impact on the holistic economic redevelopment of their target communities by providing the businesses with customers that have the economic base of homeownership. We believe that this will increase the chance that the businesses that the CDEs invest in will succeed.

## Other Comments

The proposed "Allocation Agreement" is administratively unnecessary and contrary to the statute's intent. The CDFI Fund proposes that CDEs that receive an allocation of the New Markets Tax Credit would sign an "Allocation Agreement" with the fund, specifying the terms and conditions of that allocation. We believe this is unnecessary for smooth administration of the program and is contrary to the statute's intent that the monitoring responsibility reside with the private investors whose capital is at risk in the CDE. The CDFI Fund's agreements with awardees for its Core Program generally take 6-12 months to negotiate. In the first several rounds of Core Program awards, some negotiations extended for 12-36 months. Although some of this delay was caused by the awardees, the Fund's processes move much slower than private market investors' decisionmaking. Requiring an Allocation Agreement with the Fund will similarly slow down the rapid investing of this private capital. Second, contrary to the statute's intent, the proposed Allocation Agreement puts the CDFI Fund in the role of policing compliance, where the statute squarely placed that responsibility on the private investors. The New Markets Tax Credit provides only a shallow subsidy to private capital, and imposes a substantial recapture penalty on investors, should the CDE fall out of compliance. Similar tax credits, such as the Low Income Housing Tax Credit, do not require this type of negotiated agreement. If there are reporting requirements from CDEs that the CDFI Fund needs in order to evaluate the credit's effectiveness, then these should be spelled out in the Notice of Allocation Availability and in the application itself, so that nothing remains to be negotiated after a CDE receives a tax credit allocation. The ingenuity of the New Markets Tax Credit is that it piggybacks on fundamentally private market decisionmaking, that is, the CDEs formulation of its business plan and the investors' evaluation of whether the CDE's plan is likely to succeed. The proposed Allocation Agreement burdens this decisionmaking by introducing the CDFI Fund into the process. We urge you to remove the proposed Allocation Agreement, and substitute a more thorough application in the allocation process for the credit initially.